

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**STEPHEN P. CURTIS,
LIBERTATIAN PARTY OF NEW MEXICO,
CHRIS LUCHINI
and
RANOTA Q. BANKS,**

Plaintiffs,

1:20-CV-0078-JB-JHR

v.

**MAGGIE TOULOUSE OLIVER,
in her official capacity as Secretary of State of New Mexico.**

**BERNALILLO COUNTY CLERK LINDA STOVER
MOTION TO QUASH A PORTION OF SUBPOENA TO APPEAR
AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION**

Bernalillo County Clerk, Linda Stover (“Stover”), by and through the Bernalillo County Attorney’s Office, (W. Ken Martinez and Natalia Sanchez Downey), hereby requests that this court quash, in part, the subpoena dated August 7, 2020 commanding appearance to testify at a hearing scheduled for August 17, 220 at 9:30 a.m. and to produce certain documents on or before August 14, 2020 at 5:00 p.m.

On August 11, 2020, Clerk Stover received a Subpoena to Appear and Testify at a Hearing or Trial in a Civil Matter. The subpoena requested the following documents:

- 1) All Libertarian ballots cast in the 2020 primary election in Bernalillo County;
- 2) tally sheets for Stephen Curtis in the 2020 primary election in Bernalillo County;
- 3) Canvass or election results for Stephen Curtis for Bernalillo County for the 2020 primary.

See Exhibit “A”.

Clerk Stover is hereby requesting that the portion of the subpoena requesting “All Libertarian ballots cast in the 2020 the primary election in Bernalillo County” on the grounds that the ballots are confidential and are in a locked ballot box that under New Mexico law cannot be opened without a court order.

I.

AUTHORITY TO QUASH A SUBPOENA

Federal Rule of Civil Procedure (“FRCP”) 45(d)(3)(A)(iii) requires the court to quash or modify a subpoena that requires the disclosure of “privileged or other protected matter, if no exception of waiver applies.” For the reasons set forth below, Clerk Stover maintains that the ballots requested are protected from disclosure and therefore the portion of the subpoena requesting the ballots should be quashed.

II.

**BALLOTS ARE PROTECTED FROM DISCLOSURE
UNDER NEW MEXICO ELECTION LAW**

New Mexico Election Law provides:

After all certificates have been executed, the election board shall place the bundles of tabulated paper ballots in the ballot box and the ballot box shall be closed and locked.

Section 1-12-67 (NMSA 1978)

As to the handling of ballot boxes once they are locked, New Mexico Election Law further provides:

Once the ballot box has been locked by the prescient board after it first count and tally, no person shall open the ballot box or remove its contents except by court order or as otherwise provided by the Election Code.

Section 1-13-14 (NMSA 1978).

Under New Mexico law, the unauthorized opening of a ballot box is a criminal act.

Unlawful opening of a voting machine consists of, without lawful authority, opening, unlocking, inspecting, or removing the contents thereof without lawful authority, or conspiracy with others to have the same done.

Whoever commits unlawful opening of a ballot box is guilty of a fourth degree felony.

Section 1-20-4 (NMSA 1978).

Clerk Stover, or any employees of the Bernalillo County Clerk's office, is prohibited by New Mexico law from opening or removing any item from a locked ballot box. The ballots requested in the subpoena are "protected matter" and therefore under FRCP 45(d)(3)(A)(iii) court must quash the subpoena as to "All Libertarian ballots cast in the 2020 primary election in Bernalillo County."

Clerk Stover will comply with the remaining portions of the subpoena.

III.

CONCLUSION

Based on the foregoing, Bernalillo County Clerk, Linda Stover, respectfully requests that this court enter an order quashing the portion of the subpoena issued on August 7, 2020 as to the request for "All Libertarian ballots cast in the 2020 primary election in Bernalillo County."

Respectfully Submitted,
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Bernalillo County Attorney

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*Attorneys for Bernalillo County Clerk
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CERTIFICATE OF SERVICE

I certify that on August 13, 2020, I served the foregoing on counsel of record for all parties via the CM/ECF system.

/s/ Natalia Sanchez Downey
Natalia Sanchez Downey